

32.503-5 Administration of progress payments.

(a) While the ACO may, in approving progress payment requests under 32.503-3 above, rely on the contractor's accounting system and certification without prepayment review, postpayment reviews (including audits when considered necessary) shall be made periodically, or when considered desirable by the ACO to determine the validity of progress payments already made and expected to be made.

(b) These postpayment reviews or audits shall, as a minimum, include a determination of whether or not—

(1) The unliquidated progress payments are fairly supported by the value of the work accomplished on the undelivered portion of the contract;

(2) The applicable limitation on progress payments in the Progress Payments clause has been exceeded;

(3)(i) The unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or

(ii) The contractor has adequate resources to complete the contract; and

(4) There is reason to doubt the adequacy and reliability of the contractor's accounting system and controls and certification.

(c) Under indefinite-delivery contracts, the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. When the contract will be administered by an agency other than the awarding agency, the contracting officer shall coordinate with the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order-by-order.

[48 FR 42328, Sept. 19, 1983, as amended at 65 FR 16280, Mar. 27, 2000; 68 FR 13208, Mar. 18, 2003]

32.503-6 Suspension or reduction of payments.

(a) *General.* The Progress Payments clause provides a Government right to reduce or suspend progress payments, or to increase the liquidation rate, under specified conditions. These conditions and actions are discussed in paragraphs (b) through (g) below.

(1) The contracting officer shall take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after—

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(2) The contracting officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(3) In all cases, the contracting officer shall (i) act fairly and reasonably, (ii) base decisions on substantial evidence, and (iii) document the contract file. Findings made under paragraph (c) of the Progress Payments clause shall be in writing.

(b) *Contractor noncompliance.* (1) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments shall be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system shall be suspended) until the necessary changes have been made.

(2) If the contractor fails to comply with the contract without fault or negligence, the contracting officer will not take action permitted by paragraph (c)(1) of the Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(c) *Unsatisfactory financial condition.* (1) If the contracting officer finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the contracting officer shall